

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY DOWELL BAILEY, JR. #194330,

Plaintiff,

File No. 1:08-CV-542

v.

HON. ROBERT HOLMES BELL
CHRISTOPHER KING, et al.,

Defendants.

/

**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On October 20, 2009, United States Magistrate Judge Joseph G. Scoville issued a report and recommendation (“R&R”) recommending that Defendants King and Russell’s motion for summary judgment (Dkt. No. 17) be granted, that the Court decline to exercise supplemental jurisdiction over Plaintiff’s state law claims, and that all of Plaintiff’s claims against the John Doe defendant be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Dkt. No. 39, R&R.) Plaintiff Jerry Dowell Bailey, Jr. filed objections to the R&R on October 28, 2009. (Dkt. No. 42.)

This Court is required to make a *de novo* determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff objects to the R&R based on his contention that the Magistrate Judge abused his discretion by construing the evidence in the light most favorable to Defendants rather than Plaintiff. Although Plaintiff has identified some statements in the R&R that arguably favor Defendants rather than Plaintiff, none of the evidence he has identified was contradicted, nor was it material to the ultimate recommendation that judgment be entered in favor of Defendants. Plaintiff also objects to the R&R because he has not had an opportunity to conduct discovery and to review the video that allegedly would have shown an unnecessary use of physical force. Neither of these objections is sufficient to suggest that the R&R should not be adopted, particularly in light of Plaintiff's own acknowledgment that his injuries were minor. (Dkt. No. 42, Obj. 10.) *See Hudson v. McMillian*, 503 U.S. 1, 9-10 (1992) (holding that the prohibition of "cruel and unusual" punishments "necessarily excludes from constitutional recognition de minimis uses of physical force"). Plaintiff's final objection to dismissal of his failure to intervene claim against Defendant Russell is adequately addressed in the R&R.

Upon review, the Court concludes that the R&R is factually sound and legally correct, and that Plaintiff's objections are unfounded. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's objections to the October 20, 2009, R&R (Dkt. No. 42) are **OVERRULED**.

IT IS FURTHER ORDERED that the October 20, 2009, R&R (Dkt. No. 39) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (Dkt. No. 17) is **GRANTED**.

IT IS FURTHER ORDERED that because the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims, these state law claims are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's claims against the John Doe Defendant are **DISMISSED WITHOUT PREJUDICE**.

Dated: January 21, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE